

Hon. Matthew F. McHugh

Opening Statement

April 1, 1987

Today the Subcommittee begins two days of hearings on the subject of Congressional oversight of covert operations. More specifically, we will be examining whether existing procedures governing the President's authorization of covert operations, as well as his notification of and consultation with Congress, are adequate to assure meaningful Congressional oversight of such operations.

Covert operations, or "special activities" as they are often referred to in the intelligence community, have traditionally included political, economic, propaganda and paramilitary activities designed to influence foreign governments, organizations or events. In the words of President Reagan's Executive Order of December 1981 relating to U.S. Intelligence Activities, covert operations are those "conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States is not approved or acknowledged publicly ... but which are not intended to influence U.S. political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions."

Despite the fact that covert operations represent only a small fraction of the intelligence community's work, they tend to generate the most attention and controversy when publicly revealed. We would all agree that such operations are appropriate in certain cases. However, because of their sensitivity and potential for controversy at home, it is particularly important that covert operations be soundly conceived and be seen as advancing legitimate U.S. interests if they become publicly known. It is for this reason, as well as Congress' right to share in the establishment of U.S. foreign policy, that the intelligence committees are involved in the oversight of covert operations.

The primary legislation governing Congressional oversight is the Hughes-Ryan amendment of 1974, as amended by the Intelligence Oversight Act of 1980. The Oversight Act begins with a preambular clause that notes that its requirements are imposed "to the extent consistent with all applicable authority and duties, including those conferred by the Constitution upon the executive and legislative branches of the government."

The statute then provides that the intelligence committees of the Congress must be kept "fully and currently informed of all intelligence activities ... including any significant anticipated intelligence activity" This provision establishes the general requirement that the intelligence committees must be given prior notice of any covert operation.

However, the Oversight Act then goes on to create two exceptions to the general rule. First, "if the President determines it is essential ... to meet extraordinary circumstances affecting vital interests of the United States," the President may restrict prior notice to the House and Senate

leadership and the chairman and ranking minority members of the two intelligence committees (the so-called "Gang of Eight"). Second, the Act recognizes that in some cases the President may not give prior notice to anyone, but in those cases the Act requires the President to "fully inform the intelligence committees in a timely fashion"

This second exception to the general rule requiring prior notice will be a main focus of these hearings. In the case of the President's decision to covertly sell military arms to Iran, he signed his "finding" authorizing the operation in January 1986. The President not only failed to provide anyone in Congress with notice of this operation prior to its inception, he never provided notice. It was not until November of 1986 that anyone in Congress learned of this covert operation, and then only because a magazine in the Middle East disclosed it.

Our purpose in these hearings will not be to revisit the entire Iran-Contra episode. That is for other committees to do. However, inasmuch as the President may decide to initiate other covert operations, it is important for the intelligence committees to determine whether existing law contributed to the breakdown of Congressional oversight in the case of the Iran arms sales.

Of course, many of us in Congress believe that the President should have given the intelligence committees prior notice of his intent to covertly sell arms to Iran. If he had done so, members on both sides of the aisle surely would have expressed strong objections. While these objections would have been advisory only, they might have helped the President avoid embarking on a policy which was so deeply flawed in its conception and implementation. This is a classic example of why prior notification and consultation with the intelligence committees are not only a benefit for the committees, but a benefit for the President as well.

However, as previously noted, current law does not require the President to give prior notice in all cases. He may defer notice until after the operation has begun, but in those cases he must provide notice "in a timely fashion." The problem here is that appropriate cases for deferring notice are not defined, nor is there a definition of what constitutes timely notice after the fact.

When the Oversight Act was considered by the Senate in 1980, a number of Senators suggested that prior notice should be given in all cases except where emergency circumstances preclude the President from providing it. For example, Senator Inouye, the first Chairman of the Senate Select Committee on Intelligence, said the following during floor debate:

"I am of the firm belief that the only time the President would not consult with the Intelligence Committees in advance would be in matters of extreme exigency. In my experience as chairman of the Intelligence Committee and as a continuing member of that committee, I can conceive of almost no circumstance which would warrant withholding of prior notice, except in those very rare situations where the President does not have sufficient time to consult with Congress."

Similar statements were made by other Senators at the time. The legislative history is less clear about what should constitute timely notice after the fact if prior notice is not given. What is clear to most of us today is that the President utterly failed to give timely notice to the intelligence committees after authorizing the covert sale of U.S. arms to Iran.

The Subcommittee has before it today two bills that have been introduced to deal with these questions. One is H.R. 1371, which was introduced by a former member of the Intelligence Committee, Mr. Mineta of California. It would require the President to provide prior notice of all covert activities. The other bill is H.R. 1013, which was introduced by Mr. Stokes of Ohio, the Chairman of the House Intelligence Committee, and Mr. Boland of Massachusetts, its first Chairman. It has been cosponsored by all of the Majority Members of this Committee and by 49 of our colleagues in the House.

H.R. 1013 is designed to eliminate the ambiguities in existing law. It would retain the general requirement that the two intelligence committees be given prior notice of all covert activities, as well as two exceptions to this general rule. The President would continue to have discretion to restrict prior notice to the so-called Gang of Eight where required by "extraordinary circumstance affecting vital interests of the United States." However, the President could withhold prior notice only where such extraordinary circumstances exist and where "time is of the essence"; and in such cases notice would have to be given not more than 48 hours after the President has signed his finding or the intelligence activity has begun. Thus, timely notice would be specifically defined. The bill would also strike the preambular clauses of the Oversight Act, which the authors maintain adds nothing to the statute's clarity.

H.R. 1013 would also require that findings by the President be in writing, and that copies be provided to the two intelligence committees, and to the Vice President, the Director of Central Intelligence, and the Secretaries of State and Defense.

We have a very distinguished group of witnesses to address these proposals. We greatly appreciate their taking time to provide the Subcommittee with their views, and we look forward to their testimony.